Supreme Court, U. S.
FILED
APR 29 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1416

JOHN D. RANDALL,
Petitioner,

v.

THE COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION,
Respondent,

On Petition for a Writ of Certiorari To the Supreme Court of Iowa

PETITIONER'S REPLY MEMORANDUM

JAMES J. BIERBOWER
1625 K Street, N.W.
Washington, D.C. 20006
Attorney for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1416

JOHN D. RANDALL,
Petitioner,

v.

THE COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT OF THE IOWA STATE BAR ASSOCIATION,
Respondent,

On Petition for a Writ of Certiorari To the Supreme Court of Iowa

---

PETITIONER'S REPLY MEMORANDUM

Respondent, in its opposing brief in No. 79-1416, raises arguments based upon several erroneous assertions which convey false impressions and merit response.

Respondent asserts that petitioner raised only one issue in his appeal to the Supreme Court of Iowa: "Should John Randall be Disbarred or Suspended?" It must first be noted that the Supreme Court of Iowa was bound by its rules to consider the entire record on de novo review. By its own holding, the Supreme Court of Iowa is not bound by ordinary error preservation principles in de novo review of attorney disciplinary proceedings. *Committee on Professional Ethics and Conduct of the Iowa State Bar Association* v. *Behnke,* 276 N.W.2d 838, 841 (Iowa 1979). Petitioner's due process arguments are contained in the record on appeal and were therefore before the Supreme Court of Iowa. Petitioner further raised due process objections in his brief before the court below, beginning on the first page, under the heading "Argument." Appellant's Brief and Argument, pp. 1-4. Petitioner again raised due process arguments on oral submission before the court below.

Respondent states that petitioner ". . . failed to properly present any constitutional issues to the Supreme Court of Iowa" and therefore cannot now present them to this Court. Brief in Opp., pp. 10-11. This allegation of jurisdictional defect is amply refuted by the record below, which has been requested for certification and transmission to this Court. The citations to the record below which are set forth in the Petition herein, pp. 10-14, clearly demonstrate the existence of a timely and properly raised federal question sufficient to confer jurisdiction under 28 U.S.C. § 1257(3).

Respondent's statement of the case contains several assertions of fact which are not sustained by the record and which can at best be characterized as disputed.

Contrary to respondent's version, it was petitioner's understanding, prior to December, 1975, that his friend and partner, Lovell Myers, had permission from the Morningstars to sign the warranty deed conveying the "Hess 80" to Myers Farms Inc. Petitioner did not suspect actions by Myers and Morningstar against his interest in the joint venture until after the Morningstar suit against Myers Farms had commenced. Respondent further asserts that Marie Jensen and her family ". . . had maintained a close family relationship over the years . . ." with Lovell Myers. Brief in Opp., p. 4. There is ample evidence in the record to contradict this assertion.

Respondent creates the false impression that petitioner's challenge of the disciplinary panel was based upon the fact that members of that panel asked questions of witnesses. Brief in Opp., p. 7. The record below reveals that petitioner's challenge was predicated upon the identification of new charges not specified in the complaint. Rec. App., p. 260-283.

Respondent's argument, discussing the standards of due process applicable to petitioner, ignores *Ruffalo* and treats the attorney disbarment proceeding as one which is civil in nature. Brief in Opp., p. 8. Respondent's characterization is illustrative of the approach various states have taken in conducting attorney disciplinary proceedings without affording higher due process protections necessary in quasi-criminal disbarment proceedings and mandated by this court in *Ruffalo.*

Respondent asserts that ". . . [p]etitioner did not challenge the conduct of his trial before the Iowa Supreme Court." Brief in Opp., p. 10. This assertion

is incorrect. Contrary to respondent's suggestion that the petition herein comprises an "afterthought" (Brief in Opp., p. 11), petitioner affirmatively seeks redress for the abrupt and callous waiver ruling wherein the Supreme Court of Iowa chose to ignore petitioner's due process argument.

Petitioner argues that disbarment for conduct deemed violative of vague and standardless provisions of the Code of Professional Responsibility contravenes due process under the Fourteenth Amendment. Petition for Cert., pp. 23-4. Respondent states, "His argument in this regard is confined to EC 5-5." Brief in Opp., p. 11. On the contrary, petitioner's argument applies to all of the provisions with which he was charged. A major point herein, is that, in view of the vagueness and potential for abuse posed by the Code provisions, a more definitive standard of due process applicable in attorney disciplinary proceedings is required to guard against the risk of mistaken findings and erroneous decisions.

Finally, respondent suggests petitioner "seeks to have the Court judge his conduct by some non-existent standard." Brief in Opp., p. 16. The opposite is true. The petitioner's argument is that in the absence of due process, he was denied a fair hearing and substantially prejudiced thereby. The Supreme Court of Iowa chose to rubber-stamp the retroactive application of vague and standardless Code provisions to deprive petitioner of his license to practice law. The court below refused to consider petitioner's constitutional

arguments on "de novo" review. In light of the failure of the Supreme Court of Iowa to treat the constitutional issues raised herein, the need for plenary review of the action below is clear; indeed, summary reversal is now in order.

Respectfully submitted,

JAMES J. BIERBOWER
1625 K Street, N.W.
Washington, D.C. 20006
(202) 347-1900

Attorney for Petitioner